

1 HONORABLE RICARDO S. MARTINEZ  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 MICROSOFT CORPORATION,

11 Plaintiff,

12 vs.

13 INTERNAL REVENUE SERVICE,

14 Defendant.

15 NO. 2:15-cv-01605 RSM

16 FOURTH CONSENT MOTION AND ORDER  
17 REGARDING CASE SCHEDULE

18 The above-captioned action is for declaratory and injunctive relief under the Freedom of  
19 Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act, 5  
20 U.S.C. § 701 et seq. The parties jointly request that the action remain open and that the Court  
21 approve the parties’ agreed upon, modified schedule set forth in paragraph 3, below. In support  
22 of this request, the parties state the following:

23 1. On September 17, 2021, the Court issued a modified case management order  
24 adopting the parties’ proposed revised schedule and case management order. Under that  
schedule, the IRS was required to file a motion for summary judgment by December 3, 2021.

1       2. Counsel for the IRS and Microsoft have had regular discussions over the past  
 2 months to identify and attempt to narrow the issues for which summary judgment briefing would  
 3 be necessary. By letters dated September 22, 2021 and November 10, 2021, Microsoft  
 4 acknowledged that the IRS had addressed some of its concerns, and summarized a variety of  
 5 outstanding issues it had raised previously regarding the IRS's productions, draft declarations,  
 6 and draft *Vaughn* indices, including certain exemption claims. The IRS responded to certain of  
 7 the issues raised by Microsoft by letter dated November 23, 2021, and in the process, discovered  
 8 that its previously provided draft *Vaughn* index was incomplete and missing approximately  
 9 3,400 records. The IRS therefore needs additional time to supplement and revise its previously  
 10 provided draft *Vaughn* index. The IRS is also in the process of responding to Microsoft's  
 11 remaining concerns, and the parties are still engaging in good faith negotiations to narrow the  
 12 issues that may be addressed in summary judgment proceedings.

13       3. The IRS accordingly requests, and Microsoft consents, to extend the remaining  
 14 deadline for the filing of the IRS's motion for summary judgment. The IRS thus requests that the  
 15 Court adopt a case schedule extending the deadline for filing a motion for summary judgment up  
 16 to and including January 28, 2022 for the above-captioned case.

17       4. Recognizing that the parties continue to engage in good faith negotiations, the  
 18 parties agree that evidence of the IRS's efforts to address Microsoft's concerns, including any  
 19 revisions to previously exchanged declarations or exemption claims, is not admissible to prove  
 20 that the IRS's search was unreasonable or that the IRS's exemption claims were improper.

21       5. The parties jointly request that this action remain open and that the Court enter an  
 22 order adopting the case schedule proposed in paragraph 3.

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1 Respectfully submitted this 2nd day of December, 2021.  
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3 **BAKER & McKENZIE LLP**  
4

5 By: *s/Daniel A. Rosen*  
6 Daniel A. Rosen, NYBA #2790442  
7 *Pro Hac Vice*  
8 452 Fifth Avenue  
9 New York, NY 10018  
10 Tel: (212) 626-4272  
11 Fax: (212) 310-1600  
12 Email: [daniel.rosen@bakermckenzie.com](mailto:daniel.rosen@bakermckenzie.com)

13 *Attorney for Plaintiff Microsoft Corporation*

14 **U.S. DEPARTMENT OF JUSTICE**  
15

16 By: *s/Stephen S. Ho*  
17 Stephen S. Ho  
18 Trial Attorney, Tax Division  
19 U.S. Department of Justice  
Post Office Box 227  
Washington, DC 20044  
Tel: (202) 616-8994  
Fax: (202) 514-6866  
Email: [stephen.s.ho@usdoj.gov](mailto:stephen.s.ho@usdoj.gov)

20 *Attorney for Defendant Internal Revenue Service*  
21

22  
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25 FOURTH CONSENT MOTION TO EXTEND TIME AND ORDER  
REGARDING CASE SCHEDULE  
(Case Nos. 2:15-cv-1605)

U.S. Department of Justice, Tax Division  
Ben Franklin Station, P.O. Box 227  
Washington, D.C. 20044  
202-616-8994 (Phone)  
202-524-6866 (Fax)

## **CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing JOINT MOTION via the Court's electronic case filing system on December 2, 2021.

/s Stephen S. Ho

STEPHEN S. HO

## **ORDER**

It is SO ORDERED this 6<sup>th</sup> day of December, 2021.

Ricardo S. Martinez  
RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

BAKER & MCKENZIE LLP

By: s/ Daniel A. Rosen  
Daniel A. Rosen, NYBA #2790442  
*Pro Hac Vice*  
452 Fifth Avenue  
New York, NY 10018  
Tel: (212) 626-4272  
Fax: (212) 310-1600  
Email: [daniel.rosen@bakermckenzie.com](mailto:daniel.rosen@bakermckenzie.com)

*Attorney for Plaintiff Microsoft Corporation*

## U.S. DEPARTMENT OF JUSTICE

By: *s/ Stephen S. Ho*  
Stephen S. Ho  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 227  
Washington, DC 20044  
Tel: (202) 616-8994  
Fax: (202) 514-6866  
Email: [stephen.s.ho@usdoj.gov](mailto:stephen.s.ho@usdoj.gov)

*Attorney for Defendant Internal Revenue Service*

FOURTH CONSENT MOTION TO EXTEND TIME AND ORDER  
REGARDING CASE SCHEDULE  
(Case Nos. 2:15-cv-1605)

U.S. Department of Justice, Tax Division  
Ben Franklin Station, P.O. Box 227  
Washington, D.C. 20044  
202-616-8994 (Phone)  
202-524-6866 (Fax)